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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,565	03/31/2004	Arlo H. T. Lin	CFP-1842-1 (15722/471)	6890
23595	7590	06/05/2006	EXAMINER	
NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			BASICHAS, ALFRED	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/814,565

Applicant(s)

LIN, ARLO H. T.

Examiner

Alfred Basichas

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 and 14-18 is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

This Office Action is in reply to the Request for Appeal Conference filed May 5, 2006.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 2, and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuriyama (JP11051391) in view of Semenko (3,816,057). Kuriyama discloses substantially all of the claimed limitations including, among other things, a cigarette lighter 1 including, among other things, a reservoir for storing fuel 17, a head 6

formed on the reservoir, a valve 7a for releasing the fuel from the reservoir, a nozzle 7b put in the head for spraying the fuel from the valve, an ignition device 8 for igniting the fuel sprayed from the nozzle, a cover 4 for covering the head and a visual alarm 23 for providing only one round of a visual message every time the cover is lifted, a collar 6, wherein the alarm includes a switch 30 for contact with the cover when the cover is lifted (see at least fig. 5), further including a lever 15a for controlling the valve, a container 3 integrated with the reservoir, wherein the ignition device is put in the container (see at least fig. 1) and includes an electrode 11 extending to the vicinity of the nozzle (see at least fig. 3). Kuriyama does not specifically recite the message as audible or the claimed duration (i.e. one round).

a. Semenکو discloses, among other things, a cigarette lighter having a cover 36 and "if desired" an audible message every time the cover is lifted, with the alarm including a speaker 34. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the audible message of Semenکو into the invention disclosed by Kuriyama, so as to provide for the desired effect.

b. As regards having only one round of the audible message, it is a matter of design choice based on esthetic appeal. The particular message and duration is simply a matter of personal preference. In view of the absence of criticality for this particular design, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate it into the invention disclosed by Kuriyama in view of Semenکو, so as to provide for the desired esthetics.

4. Claims 3-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuriyama (JP11051391) in view of Semenko (3,816,057), and further in view of Chen (6,527,542). Kuriyama discloses substantially all of the claimed limitations but does not specifically recite the claimed hinge arrangement including ears and the positioning of the switch between the ears.

c. Chen teaches a cigarette lighter including a cover 20, head 58, and collar 5 including a hinge arrangement that utilizes ears (see at least fig. 2). Chen does not specifically discuss the ears as they are clearly old and well known in the art. Furthermore, this arrangement has no specific criticality other than mere design choice based on esthetic appeal. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the ear arrangement taught by Chen on the collar and/or the cover of Kuriyama in view of Semenko, so as to provide for the desired esthetic appeal.

d. As regards the placement of the switch between the ears, this is simply an extension of the desired appearance. As disclosed by Kuriyama, the placement of the switch is best located at the hinge holding the cover. Accordingly, the placement of the switch in an arrangement that utilizes ears would naturally extend to require that the placement thereof be therebetween. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to place the switch between the ears, so as to provide for the desired esthetic appeal.

Allowable Subject Matter

5. Claims 10 and 14-18 are allowed.

Response to Arguments

6. Applicant's arguments with respect to the claim have been considered but are moot in view of the new grounds of rejection. Nevertheless, certain arguments merit attention. Applicant's arguments regarding criticality are premised on the assumption that it is the examiner's position that the limitation is not patentable because it lacks criticality. This is simply not the case. The examiner has simply asserted that the limitation is a matter of design choice. Criticality for a particular design may overcome a rejection based on design choice. Since there appears to be no such criticality, it is unlikely that applicant can overcome the rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571 272 4828. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872 9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

May 25, 2006


Alfred Basicas
Primary Examiner